

# **REGULATORY AND FINANCIAL ISSUES WORK GROUP**

Delegate Thelma Drake, Chair

## **STATUS REPORT - 2004 INTERIM**

### **WORK GROUP CHARGE**

Review and recommend policies aimed at identifying and alleviating regulatory and financial obstacles to the production and maintenance of affordable housing; develop incentives for local government to eliminate regulatory barriers; and review the impact of economic development on affordable housing. The work group shall provide an interim report to the full Commission by November 15, 2004, and a final report to the full Commission by November 15, 2005.

### **SUMMARY**

- Held two meetings over the course of the interim (August 9 and October 21).
- Conducted an extensive review of the status of recommendations made in the 1995 Report of the Secretary of Commerce and Trade on Regulatory Barriers to Housing Affordability (House Document No. 54, 1995).
- Reviewed the planning review cycles and processes used by local planning commissions.
- Developed issues relating to the regulatory barriers that are particular to nonprofit housing providers.
- Developed issues for consideration for 2005 interim with the aim of recommending specific policies for alleviating unnecessary regulatory barriers.

## **MEETING SUMMARY**

***August 9, 2004, House Room C, General Assembly Building, Richmond, Virginia***

### **Work Group Members Attending:**

Delegate Thelma Drake (Commission Member)  
Senator Mary Margaret Whipple (Commission Member)  
Gary Garczynski (Commission Member)  
Janet Dingle Brown (Virginia Poverty Law Center)  
Connie Chamberlin (Housing Opportunities Made Equal)  
Mark Flynn (Virginia Municipal League)  
Andrew Friedman (VA Beach Dept. of Housing and Neighborhood Preservation)  
Barbara Favola (Arlington County Board of Supervisors)  
Ted Keobel (Virginia Tech)  
Mike Toalson (Home Builders Association of Virginia)  
**Staff:** Amigo Wade, Lisa Gilmer

### **Work Group Members Absent:**

Senator William C. Mims (Commission Member)  
Robert Adams (Virginia Housing Coalition)  
Anne Davis (U.S. Department of Housing and Urban Development)  
William Ernst (Department of Housing and Community Development)  
Dana Fenton (Prince William County)  
Dawn Hester (City of Norfolk)  
Robert Hynes (Arlington County Disability Advisory Commission)  
Mark Ingrao (Apartment and Office Building Association)  
David Kovacs (Virginia Conservation Network)  
Patrick McCloud (Richmond Apartment Management Association)  
Kurt Negaard (Virginia Association of Realtors)  
Michele Watson (Virginia Housing Development Authority)

The meeting was called to order at 1:05 p.m. **Delegate Drake** reviewed the charge for the work group and the specific objectives for the meeting. Members of the work group were then asked to introduce themselves.

## **Agenda Items**

### **1. Review of Status of recommendations; Regulatory Barriers to Housing Affordability (House Document 54, 1995)**

**Amigo Wade** provided a review of the status of HJR 192 (1994) recommendations. After the presentation, several work group participants commented on the status of the recommendations and possible actions that may be taken by the work group.

**Mr. Garczynski** cited four key issues related to the focus of the state's housing policy:

1. The need to focus on delivery systems of housing- how to produce housing as quickly as possible
2. The relationship that the choice/type and price of housing -> how is it working for or against production of affordable housing.
3. Infrastructure funding and revenue- "proffer bag" and "transfer taxes."
4. Financing of homes on an individual basis.

**Ms. Chamberlin** cited the need to encourage regional cooperation.

**Mr. Flynn** stated that the threshold issue is dealing with affordable housing: we have a definition for affordable housing as it relates to buying a house, but need to look at it in terms of buying or renting. There is a need to define more clearly what affordable housing is: i.e., should we worry about making a \$750,000 house cost \$650,000? Also, there is a need to determine i) the driving factors in housing costs, and ii) the rules that deal with quality of housing.

**Senator Whipple** stated that the work group should look to Arlington County, which has successfully created more housing by creating bonus density points. **Senator Whipple** also cited the success in getting people to live downtown and stated that the ability to create housing relates to the locality's commitment to building housing along its infrastructure- i.e. smart growth

**Mr. Koebel** expressed concern that the work group should exercise caution not to separate affordable housing from other housing. He stated that unless you are producing enough housing (meaning enough land for development 15 years into the future) then you will be forcing up the price of housing anyway.

**Mr. Toalson** then provided the following as critical points for consideration:

- The demand for new housing is far exceeding the ability of homebuilders to produce it.
- The problem is the inefficiency of the process, which starts with the rezoning process and stretches out for months or years. What are some solutions?
- The need to look at the proffer system and its increasing impact on the production of affordable housing.

**Mr. Toalson** also stated that the work group would benefit from following the work of the Commission on Growth, which is currently looking at the impact of the proffer system.

**Senator Whipple** stated that strategies for producing housing and affordable housing are needed.

**Mr. Garczynski** stated that the issue is the delivery system and that if a house can be put in an owner's hands in 6 months, everyone would be a winner.

## **2. Work Plan Discussion**

The meeting then centered on a general discussion regarding the work plan. The following statements were made as part of this discussion.

Several members commented on the issues that should be addressed by the work group in future meetings.

**Ms. Chamberlin** stated that there was a need to get information from nonprofits regarding the particular issues that they experienced. **Mr. Bob Adams** and Commission Member **T.K Somanath** were suggested as possible sources.

There was also discussion of VHDA's nonprofit organization task force and the beneficial role that it could play in the work group's deliberations.

**Senator Whipple** suggested that the work group look more at the role that the VA Housing Partnership Fund has played and the role that it may play in the future. She stated that it would be helpful to review what the experience of the Fund has been (even though funds have been depleted). **Mr. Bill Shelton** noted that DHCD has done a report on the use of the Fund and that it would be provided to the work group.

**Ms. Brown** expressed concern that the work plan be flexible to allow inclusion of additional items for consideration that may come up over the course of the work group's work. Specifically, she cited possible changes in the HUD Section 8 program that may provide for block grants of the funds and if that occurred there would be a need for some review of the implications that would have on housing affordability.

**Mr. Friedman** suggested that it would be helpful to invite some of the biggest planning review commissions to tell the work group of some of their problems and to discuss the review cycles and the processes that they use in reviewing plats and site plans.

**Ms. Favola** suggested that the work group not just look at what the agencies were doing and their processes but also the completeness of the planning documents that are submitted by developers. She stressed the need to look at both sides of the review issue; the review cycle as well as the planning documents that are submitted.

**Mr. Garczynski** stated that it would be beneficial to have high profile planning directors to come in and talk to the work group.

**Ms. Chamberlin** continued to stress that affordability need to be looked upon as a regional issue.

The meeting adjourned at 2:35 p.m.

## **MEETING SUMMARY**

***October 21, 2004, House Room C, General Assembly Building, Richmond, Virginia***

### **Work Group Members Attending:**

Senator Mary Margaret Whipple (Commission Member)  
Senator William C. Mims  
Robert Adams (VA Housing Coalition)  
Janet Dingle Brown (VA Poverty Law Center)  
Anne Davis (US Dept. of Housing and Urban Development)  
William Ernst (Dept. of Housing and Community Development)  
Dana Fenton (Prince William County)  
Mark Flynn (Virginia Municipal League)  
Andrew Friedman (VA Beach Dept. of Housing and Neighborhood Preservation)  
Mark Ingrao (Apartment and Office building Association)  
David Kovacs (Virginia Conservation Network)  
Mike Toalson (Home Builders Association of Virginia)  
**Staff:** Amigo Wade, Elizabeth Palen, Lisa Gilmer

### **Work Group Members Absent:**

Delegate Thelma Drake (Commission Member)  
Gary Garczynski (Commission Member)  
Anne Davis (U.S. Department of Housing and Urban Development)  
Dawn Hester (City of Norfolk)  
Barbara Favola (Arlington County Board of Supervisors)  
Robert Hynes (Arlington County Disability Advisory Commission)  
Patrick McCloud (Richmond Apartment Management Association)  
Kurt Negaard (Virginia Association of Realtors)  
Michele Watson (Virginia Housing Development Authority)

The meeting was called to order at 1:10 p.m. by **Senator Whipple**, who served as acting chair of the work group.

## **Agenda Items**

### **1. Presentation: Planning Review Cycles and Processes**

**Mr. Jeffrey Harvey**, Stafford County Director of Planning & Community Development, discussed the planning review cycles and processes that are used by local planning and zoning agencies.

**Mr. Harvey** discussed in detail the process used for major and minor subdivisions, which are geared more toward the construction of individual homes, and site plans, which are more geared more toward commercial uses. Several members of the work group offered questions during Mr. Harvey's presentation.

**Mr. Kovacs** asked if site plans were required to be reviewed by the planning commission. **Mr. Harvey** responded that some planning commissions do review site plans; however, in Stafford County the review of site plans is deemed an administrative function.

**Mr. Friedman** asked if high growth contributed to a delay in reviewing in some areas. **Mr. Harvey** responded that over the last two years in Stafford County there has been some staff turnover and that in the Fredericksburg areas there is a general shortage of engineers. Both contributed to produce some delays.

**Ms. Brown** asked if the time from the initial proposal to the actual breaking of ground was about 2 years and **Mr. Harvey** stated that in his county the time was approximately 1 to 1 1/2 years. **Ms. Brown** then asked if there were any practices that differentiated in terms of fees and bonds for affordable housing projects. **Mr. Harvey** responded that in Stafford County there was no differentiation, and that as far as bonds were concerned the County would want to have at least a 100% bond to protect the county (It was noted that the Code of Virginia provides that a locality may require up to a 125% bond).

Regarding the review process, **Mr. Toalson** stated he was aware of many situations involving developers who have resubmitted plans with corrections that were requested by the locality pursuant to initial review, only to find additional deficiencies cited. This situation, stated **Mr. Toalson**, is unfair and costly to the developer and leads to further unnecessary delay. Reference was made to the process used by the Uniform Statewide Building Code wherein the building official is authorized to make changes to plans. The issue was raised regarding whether it was advisable to allow engineers to make changes to plats.

**Mr. Toalson** further stated that the Department of Environmental Quality uses a chart to track its permit process from the beginning to the end and that is accessible to participants in the process. He stated that this allows the participant to see where the permit is in the process at all times and results in less frustration.

**Mr. Kovacs** stated that there was need to know how resubmitting plans delayed the process and what required the resubmittals: i.e., what percentage was resubmitted for missed items? For new items not previously cited? For items not addressed at all?

**Senator Mims** stated that he represents several engineers in the Northern Virginia area and that this issue had caused some concern. He cited as a potential problem the belief by some in the field that some fast growing areas had a practice of merely reviewing plans until they get to the first deficiency, then sending them back for that correction rather than reviewing the entire set of plans and noting all deficiencies before sending them back for correction. **Senator Mims** asked generally what the General Assembly could do legislatively to make it clear that the desired policy is to have the plans thoroughly reviewed in the first instance. As possible options, **Senator Mims** offered that either the legislature could provide that (i) after the first review of plans a locality

could only subsequently reject the same plans for deficiencies caused by the second submission or (ii) the reviewing locality would only get one opportunity to perform a review.

**Mr. Flynn** pointed out that currently § 15.2-2259 includes language clearly providing that a good faith effort be made by the reviewing locality to perform a thorough review. **Mr. Toalson** countered that despite that language, the situation has not improved. **Mr. Harvey** stated that the issue of proper review was in reality an issue of professionalism. He asserted that if the situations that were being offered were true then they were the result of individuals not doing the job that they are paid to do.

**Mr. Flynn** noted that one option available to a developer was to seek a writ of mandamus on an expedited basis as provided by the statute. **Mr. Toalson** stated that the option was not used very often because of the costs that are involved. **Mr. Friedman** stated that he could not support legislation that penalized the neighborhood that surrounded a project for a mistake. **Mr. Fenton** agreed that legislation would be premature.

**Mr. Kovacs** suggested that a peer review process be instituted by legislation. Such a process would approach the problem from the standpoint of professionalism and education.

**Mr. Ernst** commented that the more sunshine you have in the process the more successful the compliance will be. He supported the use of an automatic tracking system that the public could access.

**Mr. Fenton** stated that Prince William County had established a commercial developer task force that has assisted in cutting the review time.

**Ms. Lynn Robinson** of Henrico County stated that use of a training program for the building community to review issues associated with the process has been very successful in her county. In addition, she stated that inspectors had been supplied with “notebooks” that allowed them to electronically enter inspection data. **Mr. Toalson** noted that the technology was expensive. He recommended that HUD be asked to allow localities to use federal money to upgrade or install tracking systems for the development process.

**Ms. Watson** of the Affordable Communities Initiative asserted that incentive points for communities to reduce regulatory barriers should be pursued. **Ms. Brown** added that there was a need for state incentives for inclusionary zoning. She requested staff to get information on what incentives are available in Virginia as well as what exists in other states.

**Mr. Friedman** stated that the number one barrier was public awareness, that the issue many times was that no change is good.

**Mr. Fenton** asked **Mr. Harvey** if he was aware of situations where plans had to be reviewed a second or third time and he replied that he was. **Mr. Fenton** then asked if



those situations involved some common elements that seemed to go on beyond the second or third review and **Mr. Harvey** replied that he was not aware of the things that routinely came up as deficient.

## **2. Presentation: Barriers to Affordable Housing- Virginia Nonprofit Housing Industry.**

**Robert Adams**, Vice President of the Virginia Housing Coalition, discussed the particular problems that nonprofit housing providers experience with regulatory and financial barriers.

**Mr. Adams** stated that although there are over 100 nonprofit housing providers, they all share some common elements. For instance, he stated, they all are mission-based and have volunteer boards. Other points made by Mr. Adams about nonprofit housing providers included:

- Uneven distribution throughout the state (organizations are less strong in Hampton Roads and Southside);
- Diverse in terms of structure and missions;
- Faith-based organizations as a growing part of the nonprofit housing universe (such as Habitat for Humanity);
- Usually pursue projects that are smaller in size and targeted for individuals with lower incomes;
- Support of neighborhood development projects in addition to houses (i.e. new higher quality housing in depressed areas);
- Financing is usually extremely complicated; and
- Most nonprofits operate in either urban or rural areas; few operate in suburban areas.

**Mr. Adams** noted that nonprofits generally have a better track record in dealing with the neighborhoods that surrounded their projects. He attributed this success to the time that nonprofits are willing to put into building relationships and the fact that many have ties to the neighborhoods and communities.

**Mr. Adams** stated that financing is the biggest barrier that most nonprofits face as they are not very well capitalized. He suggested the following ways to ease this barrier:

- Creation of a Housing Trust Fund;
- Coordination of federal, state and local resources;
- Establishment of an online system for grants and loans.

**Mr. Adams** also stated that other barriers are the market and public policy: i.e. land costs and exclusionary zoning.

**Ms. Brown** asked if impact fees and proffers were also barriers. **Mr. Adams** responded that they were but because the projects were of smaller scale, impact fees and proffers were not as big an issue.

**Mr. Ingrao** stated that many local developer-funded trust funds have been created but most do not know how to use the funds. **Mr. Ingrao** then asked **Mr. Adams** for a definition of affordable housing. **Mr. Adams** stated that the workable definition was 120% of median but that the federal level was 80% of the median.

**Mr. Toalson** asked if exclusionary zoning (i.e. requiring smaller lots) serves as a barrier. **Mr. Adams** stated that some states had attempted to develop incentives to localities for inclusive zoning, but that they have not been very successful. **Mr. Flynn** asserted that it was effective to require a developer to pay into a fund or dedicate units for affordable housing. **Mr. Toalson** responded that it was wrong to require a private owner to subsidize the housing needs of a locality. **Mr. Ingrao** added that any incentive needed to be fair and predictable.

The consensus among the membership was that other programs aimed at reducing regulatory barriers or increasing the supply of housing should be reviewed by the work group, including:

- Reviewing successful programs used by Northern Virginia localities,
- Bonus density provisions (pros and cons), and
- Reviewing with the Virginia Housing Development Authority the status of its mixed income/mixed use projects.

The meeting was adjourned at 3:05 p.m.

## **PRESENTATIONS AND REPORTS\***

1. Review of Status of Recommendations of the HJR 192 Report, Amigo R. Wade, Senior Attorney, Division of Legislative Services, August 9, 2004.
2. Planning Review Cycles and Processes, Jeff Harvey, Director, Department of Planning and Community Development, Stafford County, October 21, 2004.
3. "Barriers to Affordable Housing - Virginia's Nonprofit Housing Industry," Robert Adams, Virginia Housing Coalition, October 21, 2004.

*\*Full copies of presentations made to the work group may be retrieved from the Commission's website: <http://dls.state.va.us/houscomm.htm>*